

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 150.06 and 150.16
Title 14, California Code of Regulations (CCR).
Re: Seasonal Closures for Cabezon, Greenling, Sheephead and Rockfishes

- I. Date of Initial Statement of Reasons: October 4, 2002
- II. Date of Pre-adoption Statement of Reasons: November 8, 2002
- III. Date of Final Statement of Reasons: December 20, 2002
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: October 25, 2002
Location: Crescent City, CA
 - (b) Discussion Hearing Date: December 6, 2002
Location: Monterey, CA
 - (c) Adoption Hearing: Date: December 20, 2002
Location: Sacramento, CA
- V. Update:

The Commission adopted the proposed regulatory changes to Sections 150.06 and 150.16, Title 14, CCR, and selected the Department's recommended option of aligning commercial fishing seasons for cabezon, greenlings and sheephead (CGS) statewide, resulting in a 2-month closure in the months of March and April for all areas beginning with the 2003 season.

The Commission took this action at its special meeting December 20th in Sacramento, following a recommendation to do so from the two Commissioners present at the discussion hearing in Monterey on December 6th. Although the December 6th date was noticed as the date of the adoption hearing in the regulatory notice register, the Commission was unable to take the action at that time due to lack of a quorum.

The actions result in conforming the state's commercial nearshore rockfish seasons with new federal rockfish fishing seasons which begin in January 2003, and streamlines fishing seasons for CGS and nearshore rockfish in most areas

so that the seasons are open and closed at the same time. Since CGS and nearshore rockfish reside in the same habitats and commonly are caught together, aligning the fishing seasons serves to greatly reduce bycatch of these species during closed periods.

Minor technical changes were made to the originally proposed regulatory language since the Initial Statement of Reasons was drafted and the notice was filed with the Office of Administrative Law. The corrections were intended to differentiate between 'seasonal closure periods' which are established before the onset of the fishing season, and 'in-season closures' which occur when a specified quota has been caught, and therefore fishing activity cannot be allowed to continue through the duration of the open season. The Pre-Adoption Statement of Reasons, submitted November 8, provides additional background information supporting the need for these technical clarifications, along with the modified regulatory text. No additional changes have been made to the regulatory language since submission of the Pre-Adoption Statement of Reasons.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

A summary of public comments received at the discussion hearing on December 6, 2002, is provided in Table 1 which accompanies this Final Statement of Reasons. The Department's response to these comments is included.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, CA 95814

VIII. Location of Department Files:

Department of Fish and Game
Marine Region
20 Lower Ragsdale Drive
Monterey, CA 93940

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

Two different options on how to align the commercial seasons for CGS in the northern area to better conform to new federally-established seasons for nearshore rockfish are prepared for the Commission's consideration, and are noticed as part of this regulatory package.

Additionally, the Department identified a third option that would align both CGS and nearshore rockfish seasons in the northern area to federally-established nearshore rockfish seasons for areas south of 40°10' (near Cape Mendocino). However, since nearshore rockfish catches in the northern area are applied against a different federal OY, putting seasonal restrictions on their catch in this manner could put them at a disadvantage since Oregon fishermen also fishing against that OY would not be subject to those seasonal closures. At the September PFMC meeting when the federal regulations were under consideration it was understood that the regulations for rockfish in northern California would be consistent with the Oregon regulations. For these reasons, the Department did not prepare this option for the Commission's consideration as part of this regulatory action.

(b) No Change Alternative:

Leaving commercial seasons for CGS open while federal seasons for minor nearshore rockfish are closed will result in bycatch of rockfish that cannot legally be retained and sold. Since rockfish suffer mortality and stress from hooks, traps and barotrauma when the regulations require they be released, having seasons out of alignment is not desirable for the health of the resource.

(c) Consideration of Alternatives:

In view of information currently possessed, no alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Adverse Economic Impact on Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses

to compete with businesses in other states, as the actions simply seek to shift various months in which fishing activities may occur or not occur. This rulemaking does not address allowable catch levels, which would impact businesses.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(e) Nondiscretionary Costs/Savings to Local Agencies: None

(f) Programs mandated on Local Agencies or School Districts: None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None

(h) Affect on Housing Costs: None

Updated Informative Digest (Plain English Overview)

On December 20, 2002, the Commission adopted the proposed regulatory changes which conform the state's commercial nearshore rockfish fishing seasons to new federal regulations and aligns seasons for cabezon, greenlings and sheephead (CGS) statewide, resulting in a 2-month closure in the months of March and April for commercial CGS fisheries in all areas beginning with the 2003 season.

The Commission took this action at its special meeting December 20th in Sacramento, following a recommendation to do so from the two Commissioners present at the discussion hearing in Monterey on December 6th. Although the December 6th date was noticed as the date of the adoption hearing in the regulatory notice register, the Commission was unable to take the action at that time due to lack of a quorum.

The actions result in setting the state's commercial nearshore rockfish seasons to match new federal rockfish fishing seasons which begin in January 2003, and streamlines fishing seasons for CGS and nearshore rockfish in most areas so that the seasons are open and closed at the same time. Since CGS and nearshore rockfish reside in the same habitats and commonly are caught together, aligning the fishing seasons serves to greatly reduce bycatch during closed periods. Since rockfish can suffer mortality and stress from hooks, traps and barotrauma when the regulations require they be released, having seasons out of alignment is not desirable for the health of the resource. Consistent fishing seasons for CGS and rockfish allows targeting to co-occur at the same time during open periods, while during closed periods, bycatch of species that cannot be retained is minimized.

Minor technical changes were made to the originally proposed regulatory language since the Initial Statement of Reasons was drafted and the notice was filed with the Office of Administrative Law. The corrections were intended to differentiate between 'seasonal closure periods' which are established before the onset of the fishing season, and 'in-season closures' which occur when a specified quota has been caught, and therefore fishing activity cannot be allowed to continue through the duration of the open season.